

JIMMY D. SMOTHERS
Claimant

VS.

TRANSERVICE LOGISTICS, INC.
Respondent

AND

**HARTFORD INSURANCE COMPANY
OF THE MIDWEST**
Insurance Carrier

Docket No. 1,039,301

On September 3, 2010, the Kansas Court of Appeals reversed and remanded for further action the Board's May 29, 2009 decision in the above referenced case. E. Lee Kinch, of Wichita, Kansas was appointed by the Acting Director of Workers Compensation as a Pro Tem in this matter.¹

The Court of Appeals concluded that the Board erred in applying the \$50,000 compensation cap to claimant's award of benefits. Thus the Board's Order was reversed and the matter was remanded to the Board with directions to enter an award consistent with its opinion by recalculating the compensation awarded to the claimant.

John M. Ostrowski, of Topeka, Kansas, appeared for the claimant. D'Ambra M. Howard, of Overland Park, Kansas, appeared for respondent and its insurance carrier.

¹ This appointment was in light of the retirement of Carol Foreman.

The Board's charge is simply to enter an Award consistent with the findings made by the Court of Appeals. Simply put, the Court of Appeals concluded that claimant's recovery was not limited by the \$50,000 statutory cap provided for in K.S.A. 44-510f(a)(4) and therefore, although the underlying findings of the Board were not challenged, its calculation of the Award was reversed. Upon this matter being remanded to the Board, the parties were requested to brief the issue. The parties proceeded to file a Joint Stipulation agreeing to the compensation that has already been paid to the claimant and that respondent has overpaid by \$3,486.57.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Bruce E. Moore dated January 13, 2009, is modified in accordance with the Court of Appeals Opinion. Claimant is entitled to an Award not to exceed \$100,000. All other findings and conclusions contained within the ALJ's Award are hereby affirmed to the extent they are not modified herein.

IT IS SO ORDERED.

Dated this _____ day of December 2010.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: John M. Ostrowski, Attorney for Claimant
D'Ambra M. Howard, Attorney for Respondent and its Insurance Carrier
Bruce E. Moore, Administrative Law Judge